APPENDIX

[Filed July 8, 1980]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

WALTER ROBERT TAYLOR, Plaintiff,	)	
-vs-	)	
KEVIN M. GILMARTIN, MICHAEL E. TRAUSCHT, WAYNE N. HOWARD, FREEDOM OF THOUGHT FOUNDATION, INC., JOSEPH ALEXANDER, ESTHER ALEXANDER, GARY SCHARFF, WALTER WINSTON TAYLOR, SYLVIA TAYLOR, DAVID TAYLOR, and DOES I THROUGH X, Defendants.	)	No. CIV-77-0351-D

ORDER

Plaintiff Walter Robert Taylor brought this action against the above-named Defendants alleging seven causes of action against the Defendants: first, for conspiracy to violate his civil rights, pursuant to 42 U.S.C. §§ 1983 and 1985(3); second, conspiracy to obstruct justice, pursuant to 42 U.S.C. § 1985(2); third, conspiracy to commit medical malpractice; fourth, legal malpractice; fifth, intentional infliction of emotional distress; sixth, conspiracy to falsely imprison; and seventh, conspiracy to commit assault and battery. It is asserted that this Court has juisdiction of the action pursuant to 28 U.S.C. § 1331 (federal question), § 1332 (diversity of citizenship) and § 1343 (civil rights).

Upon consideration of motions to dismiss and motions for summary judgment filed herein by Defendants Howard, Trauscht, Freedom of Thought Foundation, Inc. and the Taylors, the Court on December 30, 1978, entered an Order

and Judgment dismissing Plaintiff's cause of action for conspiracy to violate civil rights brought pursuant to 42 U.S.C. §§ 1983 and 1985(3) and his cause of action for legal malpractice against Defendants Howard and Trauscht. The Court overruled said Defendants' motions as they pertained to Plaintiff's causes of action for conspiracy to commit medical malpractice, intentional infliction of emotional distress, conspiracy to falsely imprison and conspiracy to commit assault and battery. As the Defendants' motions did not address Plaintiff's cause of action for conspiracy to obstruct justice under 42 U.S.C. § 1985(2), the Court did not consider that cause of action in its December 30, 1978, Order and Judgment. Subsequently, Defendants Howard, Trauscht, Freedom of Thought Foundation, Inc. and the Taylors filed motions for partial summary judgment wherein they sought judgment in their favor on Plaintiff's cause of action under 42 U.S.C. § 1985(2) for conspiracy to obstruct justice. On December 28, 1979, the Court granted said motions and dismissed Plaintiff's second cause of action under 42 U.S.C. § 1985(2).

Presently before the Court are the "Combined Motion to Dismiss and Motion for Summary Judgment" and the "Motion to Adopt Previous Court Orders" filed herein by Defendants Gilmartin, the Alexanders and Scharff (hereinafter referred to as "Movants"). Said Motions are supported by a Brief and Plaintiff has filed a Brief in opposition thereto. On July 3, 1980, a hearing was held in connection with the instant Motions as required by Rule 56(c), Federal Rules of Civil Procedure. At said hearing the parties were given an opportunity to present evidence but declined to do so.[1]

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[1] Also at the hearing, counsel for Plaintiff informed the Court that Plaintiff desired to drop "Does I through X" as parties to this action. Therefore, the Court determines that said parties should be dropped from this action pursuant to Rule 21, Federal Rules of Civil Procedure. Accordingly, as the instant action has recently been dismissed as to De-

In their motions Movants originally asked the Court to dismiss *all* causes of action contained in Plaintiff's Complaint for failure to allege facts sufficient to constitute causes of action against the Movants or in the alternative, that summary judgment in their favor be granted. Movants also asked the Court "to adopt this Court's orders of December 30, 1978 and December 28, 1979 and apply said Rulings to these Defendants." However, at the hearing on the instant Motions, counsel for Plaintiff asked the Court to consider the pending Motions as seeking partial summary judgment with respect to Plaintiff's first and second causes of action under 42 U.S.C. §§ 1983, 1985(2) and 1985 (3) only. In support of the instant motions, Movants have adopted the briefs previously filed herein by the other Defendants in support of their motions for summary judgment and partial summary judgment.

Plaintiff responds that the Court's previous orders do not support dismissal or summary judment as to all of Plaintiff's causes of action.

Upon consideration of the instant motions and the Court's earlier orders in this case, which are hereby incorporated in this Order, the Court is of the opinion that Movants are entitled to summary judgment on Plaintiff's causes of action under 42 U.S.C. §§ 1983 and 1985(3) for conspiracy to violate civil rights and under 42 U.S.C. § 1985 (2) for conspiracy to obstruct justice for the reasons previously set forth in said orders. Therefore, the Court finds and concludes that Movants' "Motion to Adopt Previous Court Orders" should be granted. The Court further finds that Movants' "Combined Motion to Dismiss and Motion

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1 (Continued)

fendants Walter Winston Taylor, Sylvia Taylor and David Taylor and in view of the Court's decision herein dropping "Does I through X" as party defendants, the correct caption of all pleadings filed hereafter in this case shall omit said Defendants therefrom.

for Summary Judgment" should be granted and judgment entered dismissing Plaintiff's first and second causes of action insofar as recovery is sought against the Movants.

It is so ordered this 8 day of July, 1980.

(s) *Fred Daugherty*
Fred Daugherty
United States District Judge

JUDGMENT ENTERED ON JULY 8, 1980